

JAMES HOLDER, JR.	)	
	)	
Claimant-Respondent	)	
	)	
v.	)	
	)	
INGALLS SHIPBUILDING,	)	DATE ISSUED:
INCORPORATED	)	
	)	
Self-Insured	)	
Employer-Petitioner	)	DECISION and ORDER

Appeal of the Supplemental Decision and Order Awarding Attorney Fees of Kenneth A. Jennings, Administrative Law Judge, United States Department of Labor.

John D. Gibbons (Gardner, Middlebrooks & Fleming), Mobile, Alabama, for claimant.

Paul M. Franke, Jr. (Franke, Rainey & Salloum), Gulfport, Mississippi, for employer.

Before: HALL, Chief Administrative Appeals Judge, SMITH and DOLDER, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Supplemental Decision and Order Awarding Attorney Fees (89-LHC-1928) of Administrative Law Judge Kenneth A. Jennings rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). The amount of an attorney's fee award is discretionary and may be set aside only if the challenging party shows it to be arbitrary, capricious, an abuse of discretion, or not in accordance with law. *See, e.g., Muscella v. Sun Shipbuilding & Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant's counsel sought an attorney's fee of \$2,256.25, representing 17.75 hours at \$125 per hour, and \$37.50 in expenses, for work performed before the administrative law judge in connection with claimant's hearing loss claim. The administrative law judge awarded counsel a fee of \$1,850, representing 10 hours at an hourly rate of \$125 for J. Cecil Gardner and 6 hours at an hourly rate of \$100 for John D. Gibbons, plus expenses of \$37.50. Employer appeals the administrative law judge's fee award, incorporating by reference the arguments it made below into its appellate brief. Claimant responds, urging affirmance of the fee award.

Employer's objections to the number of hours and hourly rate awarded are rejected, as it has not shown that the administrative law judge abused his discretion in this regard. *See Ross v. Ingalls*

*Shipbuilding, Inc.*, 29 BRBS 42 (1995); *Maddon v. Western Asbestos Co.*, 23 BRBS 55 (1989); *Cabral v. General Dynamics Corp.*, 13 BRBS 97 (1981). Employer's specific objection to counsel's method of billing in minimum increments of one-quarter hour also is rejected, as the administrative law judge considered this objection, and his award conforms to the criteria set forth in the decisions of the United States Court of Appeals for the Fifth Circuit in *Ingalls Shipbuilding, Inc. v. Director, OWCP [Fairley]*, No. 89-4459 (5th Cir. July 25, 1990)(unpublished) and *Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, No. 94-40066 (5th Cir. Jan. 12, 1995)(unpublished).

Employer's contention that claimant did not successfully prosecute this claim lacks merit. The administrative law judge properly held employer liable for claimant's attorney's fee after awarding claimant future medical benefits. *Ingalls Shipbuilding, Inc. v. Director, OWCP [Baker]*, 991 F.2d 163, 27 BRBS 14 (CRT)(5th Cir. 1993); *Biggs v. Ingalls Shipbuilding, Inc.*, 27 BRBS 237 (1993)(Brown, J., dissenting), *aff'd on other grounds mem. sub nom. Ingalls Shipbuilding, Inc. v. Director, OWCP*, 46 F.3d 66 (5th Cir. 1995); *Mobley v. Bethlehem Steel Corp.*, 20 BRBS 239 (1988), *aff'd*, 920 F.2d 558, 24 BRBS 49 (CRT)(9th Cir. 1990).

Employer's remaining contention, that the fee is excessive in light of the nominal amount of benefits, which was not raised below, will not be addressed for the first time on appeal. *Bullock v. Ingalls Shipbuilding, Inc.*, 27 BRBS 90 (1993)(*en banc*)(Brown and McGranery, JJ., concurring and dissenting), *modified on other grounds on recon. en banc*, 28 BRBS 102 (1994), *aff'd mem. sub nom. Ingalls Shipbuilding, Inc. v. Director, OWCP [Biggs]*, 46 F.3d 66 (5th Cir. 1995); *Clophus v. Amoco Production Co.*, 21 BRBS 261 (1988).

Accordingly, the Supplemental Decision and Order of the administrative law judge is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

ROY P. SMITH  
Administrative Appeals Judge

NANCY S. DOLDER  
Administrative Appeals Judge